

other than hearsay, the appointing authority did not submit any proofs to the hearing officer and a legal determination cannot be sustained based upon hearsay alone. Additionally, the petitioner presents case law that states that when a government agency deliberately refuses to comply with applicable statutes, case law and administrative code provisions, that, in and of itself, represents irreparable harm that cannot be compensated through monetary relief. The petitioner claims that the appointing authority can offer no justification for demoting him and therefore he has suffered irreparable harm. Further, the petitioner argues that the appointing authority would not suffer any hardship if it were to reinstate him to the rank of Fire Captain with all applicable back pay. Finally, the petitioner argues that he is unquestionably correct in this matter and therefore it is in the public's best interest to compel the appointing authority to restore him to his position as Fire Captain.

In response, the appointing authority, represented by Arthur R, Thibault, Jr., Esq., argues that the petitioner has not met the standard for a stay. Specifically, the appointing authority argues that the petitioner cannot demonstrate a clear likelihood of success on the merits of the case. It presents that the petitioner was given a direct order by the Fire Chief to undergo a medical examination on February 9, 2016 and he failed to do so and lied to his superiors about it. The appointing authority asserts that the Fire Department does not need a written policy that states that the orders of its superior officers are to be followed. Further, it indicates that the petitioner testified that he did not participate in the scheduled examination and therefore its proofs are not based solely on hearsay. Moreover, the appointing authority states that the petitioner will not suffer immediate or irreparable harm if his request for a stay is denied because if he wins his appeal, his demotion can be fully redressed by an order of back pay. Additionally, the appointing authority states that the public interest is best served if the petitioner is not restored to the Fire Captain rank pending the outcome of his appeal as he has demonstrated an outright disregard for the command structure and orders of his superiors. It presents that a fire department is a paramilitary organization and a failure to comply with a superior's order in a timely fashion cannot be tolerated.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition for a stay:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

Initially, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether or not the petitioner's actions constituted wrongful conduct warranting discipline. The Civil Service Commission (Commission) will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing before an Administrative Law Judge (ALJ) who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Likewise, the Commission cannot make a determination on whether the petitioner's penalty of demotion to Fire Fighter was appropriate without the benefit of a full hearing record before it. Since the petitioner has not conclusively demonstrated that he will succeed in having the underlying charges dismissed as there are material issues of fact present in the case, he has not shown a clear likelihood of success on the merits.

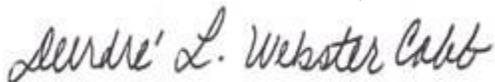
Additionally, the petitioner has not shown that he is in danger of immediate or irreparable harm if this request is not granted. While the Commission is cognizant that the petitioner's demotion will result in a reduction of pay, the harm that he is suffering while awaiting his OAL hearing is financial in nature, and as such, can be remedied by the granting of restoration to his former position and back pay should he prevail in his appeal.

Moreover, the petitioner contends that there is no hardship to the appointing authority to continue to pay him as a Fire Captain. However, the public interest would not be served by allowing the petitioner to be placed back at this higher rank given the serious nature and scope of the charges pending against him. Clearly, such allegations against a high ranking fire fighting officer cannot be casually regarded by the Commission. Based on the circumstance involved in the petitioner's alleged conduct, it would potentially be harmful to the appointing authority, as well as the public at large, to allow an individual facing such serious disciplinary charges to be returned to a higher rank without the benefit of a *de novo* hearing at OAL. Accordingly, the petition for a stay of his demotion is denied.

ORDER

Therefore, it is ordered that this petition for a stay be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23rd DAY OF MAY, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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